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THIERRY GUETTA a/k/a MR. BRAINWASH
7

8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
10

11 GLEN E. FRIEDMAN,

12 Plaintiff,

13 vs.

14 THIERRY GUETTA a/k/a MR.
BRAINWASH, and DOES 1 through
15 10, inclusive,

16 Defendants.

17 AND RELATED COUNTER-CLAIM.
18

Case No. CV10-0014 DDP (Jcx)

**JOINT STIPULATION RE: DEFENDANT
THIERRY GUETTA'S MOTION TO
COMPEL FURTHER RESPONSES TO
INTERROGATORIES AND REQUESTS
FOR PRODUCTION OF DOCUMENTS
AND REQUEST FOR ATTORNEY'S
FEES IN THE AMOUNT OF \$2,600**

[DISCOVERY MATTER]

**HON. JACQUELINE CHOOLJIAN,
MAGISTRATE JUDGE**

**[Filed concurrently with Notice of
Motion; Declaration of John Juenger;
Proposed Order]**

**DATE: March 1, 2011
TIME: 9:30 a.m.
CTRM: 20, 3rd Floor**

Discovery Cut-off: April 8, 2011
Pre-trial Conf: July 25, 2011
Trial: August 16, 2011

JOINT STIPULATION

I. INTRODUCTION

A. MOVING PARTY'S INTRODUCTORY STATEMENT

Defendant Thierry Guetta ("Guetta") seeks an order compelling Plaintiff Glen E. Friedman ("Friedman") to provide further responses to interrogatories and requests for production of documents pertaining to the photograph at issue in this action. The parties' counsel were unable to resolve their differences after an in-person meeting pursuant to L.R. 37-1. Declaration of John Juenger ("Juenger Decl."), ¶ 9.

Friedman contends Guetta infringed upon his copyright in a photograph (the "Photograph") Friedman took of the hip-hop group Run-DMC. Guetta is a world renowned artist. Guetta created a handful of works that incorporated certain aspects of the Photograph. The Photograph is similar to countless other photographs of Run-DMC.

Guetta served discovery in an effort to gain an understanding as to the value of the Photograph. Interrogatory Nos. 6 through 9 concerned Friedman's attempts to generate monies with respect to the subject photograph, all instances wherein monies were received for the photograph, every instance in which a reproduction of the photograph was sold and profits from sales of the photograph, respectively. Juenger Decl., ¶ 3; Ex. B. Guetta also served requests for documents relating to the same subject matter, including Request for Production of Documents Nos. 18, 25, 26, 28, 30, 32, 33, 35, 36, 37 and 38. Juenger Decl., ¶ 6; Ex. E. The information sought by the interrogatories and document requests is not only relevant to damages, it is relevant to determining whether Guetta's use of the photograph was fair pursuant to 17 U.S.C. § 107(4). Indeed, during the August 23, 2010 Scheduling Conference, Hon. Dean D. Pregerson asked whether there was any value to the Photograph. Juenger Decl., ¶ 3. Moreover, the Complaint alleges that Friedman has suffered substantial damage to his business "in the form of diversion of trade, loss of income and profits, and a dilution of the value" of his rights. Complaint, ¶ 23. The interrogatories request specific information, including dollar amounts. Friedman initially only objected to the interrogatories, but provided supplemental responses after meet and confer

1 correspondence. Juenger Decl., ¶¶ 5-6; Exs. C-E. The initial supplemental responses to
2 interrogatories did not respond to the specific information requested and instead gave a
3 conclusory response stating the Photograph was “widely displayed all over the world from
4 1994-2010 in publicity and promotional materials for the group Run DMC.” Juenger Decl.,
5 ¶ 6; Ex. E. The response does not indicate what steps Friedman took to generate monies
6 relating to the Photograph, how much money he received, etc. The responses also states
7 that Photograph appeared in a book of photographs that was published and that Friedman
8 received monies in that regard, but that it is impossible to determine what monies were
9 attributable to the Photograph. Id.

10 Thereafter, Guetta’s counsel set another letter indicating that the supplemental
11 responses to interrogatories and responses to document requests were deficient and that
12 Friedman would either need to concede that Guetta’s use of the Photograph did not cause
13 Friedman to suffer any losses or provide the specific information requested by the
14 discovery. Juenger Decl., ¶ 9; Ex. H. During an in-person meeting pursuant to L.R. 37-1,
15 Friedman’s counsel indicated the further supplemental responses would be provided
16 indicating that Friedman did not suffer any losses as a result of Guetta’s conduct, other
17 than a hypothetical lost licensing payment he may have received had he licensed the
18 photograph to Guetta. Juenger Decl., ¶ 10.

19 However, Friedman’s further supplemental responses to interrogatories simply
20 incorporate the previous objections and responses and make reference to documents
21 attached as Exhibit A to his supplemental responses to requests for production of
22 documents that were concurrently served, with an indication that “Plaintiff is not in
23 possession of further documents or information with respect to these matters.” Juenger
24 Decl., ¶ 10; Exs. I-J. The documents attached as Exhibit A to the responses to document
25 requests consist of four single-page documents that appear to correspond with an art
26 showing that was held in late-2003 and a T-shirt relating to that art show. Id. No other
27 information is provided by the documents. It is impossible to determine if Friedman has
28 ever made any money licensing the Photograph. Accordingly, Guetta’s counsel sent

1 another letter stating that the further supplemental responses did not indicate that
2 Friedman had not suffered any losses other than a potential royalty fee as his counsel had
3 suggested during the in-person meeting and that the further supplemental responses were
4 deficient. Juenger Decl., ¶ 11; Ex. K. Guetta's counsel further pointed out that the
5 responses do not seem truthful because, for example, Friedman must have some
6 information as to how much he earned from the sale of his book and the use of his
7 copyright with respect to the art show and/or the sale of t-shirts. Id. The responses to the
8 requests for production of documents provided by Friedman are cryptic and do not indicate
9 whether he has produced all responsive documents.

10 Guetta's counsel prepared a motion to compel after Friedman's counsel failed to
11 respond to a meet and confer letter requesting a response by December 13, 2010.
12 Thereafter, the parties agreed that Guetta would not file the motion to compel as Friedman
13 would stipulate that "he suffered no loss from Defendant's use of the subject photograph
14 other than the loss of a potential royalty payment he would have received had he licensed
15 it to" Guetta. Juenger Decl., ¶ 12; Ex. L. Despite this agreement, Friedman's counsel now
16 refuses to enter such a stipulation and insists that the stipulation instead state that
17 Friedman "waives any claim for actual damages in the instant action." Id. This change in
18 language makes a significant difference in the analysis of fair use under 17 U.S.C. § 107(4)
19 (effects of the market for and value of the copyrighted work). Friedman's waiver of his right
20 to claim actual damages is not the same as conceding Guetta's use did not damage him.

21 Friedman cannot have his cake and eat it, too. Friedman is prosecuting an action
22 against Guetta but refuses to provide information regarding the value of the Photograph.
23 Friedman's contends he received money in connection with the Photograph via the sale
24 of his book and in connection with the art-show and t-shirts, but refuses to provide any
25 information regarding his profits and refuses to state that he was not damaged by Guetta's
26 use of the Photograph beyond the loss of a hypothetical royalty payment. Therefore, the
27 instant motion to compel must be granted.

28 Additionally, pursuant to Fed.R.Civ.P. 37(a)(5), this Court should jointly and

1 severally order Friedman and his counsel The Linde Law Firm to pay the attorney's fees
2 Guetta incurred in bringing the instant motion. As set forth in ¶ 13 of the Declaration of
3 John Juenger filed concurrently herewith, Guetta has already incurred \$1,300 and
4 anticipates incurring an additional \$1,300, for a total of \$2,600.

5
6 **B. OPPOSING PARTY'S INTRODUCTORY STATEMENT**

7 Although Plaintiff has stated unequivocally he does not have possession of any
8 further specific information sought by Defendants, Defendant still filed the instant Motion
9 to Compel seeking more information. The basis for Defendant's Motion is that, Plaintiffs'
10 responses "do not seem truthful" and he "must have" more information. First, this is not
11 a basis for a Motion to Compel. Second, this is not the case.

12 Through the instant discovery Defendant apparently seeks information with respect
13 to Plaintiff's damages. In a copyright case, such as the instant one, Plaintiff's damages are
14 calculated as the amount a willing buyer would have been reasonably required to pay a
15 willing seller at the time of the infringement for the actual use made by the defendant of the
16 plaintiff's work. 17 U.S.C. § 504(b). This can also be represented by the lost license fees
17 the plaintiff would have received for the defendant's unauthorized use of the plaintiff's
18 work. *Id.*

19 The work in question is a photograph of the musical act Run-DMC, that was
20 published for the first time by Plaintiff in his 1994 self-published book entitled "*F*** You*
21 *Heroes; Glen E. Friedman Photographs 1976-1991*" containing over 100 photographs of
22 various persons and scenes, some famous. Plaintiff has never licensed the image in
23 question for any use similar to Defendant's use. The sole item wherein Plaintiff's image
24 was licensed was a small run of promotional t-shirts printed in 2003 in support of a small
25 art show. This was disclosed in discovery. Plaintiff does not have any contract with
26 respect to these shirts, to the extent one even existed. This is not uncommon. Plaintiff
27 does not have a record as to what he was promised for these shirts, if anything. This is not
28 uncommon. Plaintiff does not have a record as to what he was paid for these shirts, if

1 anything. This is not uncommon.

2 Plaintiff does have images of the shirt, and produced them to Defendants.
3 However, Plaintiff does not have royalty information sought and has produced all
4 information in his possession, custody and/or control relating to this shirt.

5 Plaintiff has previously noted that to the extent Defendant seeks more information,
6 he can and should subpoena the third parties involved in the production of the shirt. To
7 date Defendant has not done so, for reasons he may want to explain in a supplemental
8 brief. However, Defendant cannot compel Plaintiff to make up information as to his
9 royalties, simply because Plaintiff does not know the answer.

10 Moreover, while Defendant's Motion sometimes mentions Plaintiff's sale of his book,
11 Defendant conceded in the parties meet and confer that evidence of Plaintiff's sales of his
12 own book (published by Plaintiff's own publishing company, containing only photographs
13 taken by Plaintiff and containing over 100 photographs of various persons and scenes,
14 some famous), does not reveal anything whatsoever about a license fee or royalty rate for
15 use of reproduction of one image at issue in this case. Indeed, Defendant does not even
16 argue the point in the instant motion, apparently hoping the Court will make a "kitchen sink"
17 order that Plaintiff simply need to disclose all of his finances to Defendant.

18 However, the question remains, how does information relating to the sales of a 148
19 page book, with hundreds of pictures of famous persons, tell us anything about the
20 reasonable license fee for one of the pictures contained therein? The obvious answer is,
21 it doesn't.

22 Information regarding Plaintiff's book sales is simply not relevant, and is protected
23 by Plaintiff's right to financial privacy, and Defendant does not seriously attempt to argue
24 otherwise.

25 Moreover, with respect to Defendant's allegation that Plaintiff reneged on a
26 proposed stipulation, the true facts are as follows: Plaintiff was willing to stipulate away its
27 claim for actual damages, other than the loss of a hypothetical royalty payment Friedman
28 may have received had he licensed the Photograph to Guetta. Such actual damage claims

1 are expensive to prove, and in light of the other damage options available to Plaintiff,
2 Plaintiff was willing to forgo it. Unfortunately, Defendant then stated that it wanted to go
3 further and enter into a stipulation that (1) Plaintiff would not make such a claim for
4 damages, and (2) that the language would not be limited but Plaintiff's damages, but
5 should be broad enough so that could be used against Plaintiff in support of Defendant's
6 asserted affirmative defense that its plagiarism was "fair-use" pursuant to 17 U.S.C. §
7 107(4). It should not come as a surprise that Plaintiff is not willing to enter into such a
8 stipulation.

9 Finally, Plaintiff notes that Defendant's request for sanctions should be denied for
10 the same reasons as the remainder of this Motion. Moreover, Plaintiff notes that half of
11 the monetary sanctions request is based upon "anticipate[d]" time, in order to raise the
12 stakes on this Motion. This is not appropriate.

13 As set forth more fully below, Plaintiff cannot be compelled to make up information
14 and the instant Motion should be denied.

15
16 **II. DEFINITIONS:**

17 1. The terms "YOU" and "YOUR" shall mean and refer to Plaintiff and Cross-
18 Defendant Glen E. Friedman and his agents, principals, partners, joint adventurers,
19 employees, independent contractors, servants, associates, attorneys, investigators,
20 representatives, affiliates and any other person or entity acting on his behalf or under his
21 direction, or on whose behalf or under whose direction he acts.

22 2. The terms "DOCUMENT" and "DOCUMENTS" are used in the broadest
23 permissible sense under the Federal Rules of Civil Procedure and shall mean and refer to,
24 without limitation, tangible things and all written, typewritten, recorded (including audio or
25 videotape or both), graphic, photographic (including negatives), facsimile transmissions,
26 or computerized materials in whatever form, including copies, drafts, and reproductions
27 thereof to which you have or have had access and every copy of such document which
28 contains any commentary or notation not appearing in the original.

3. The term "RELATE OR REFER TO" shall mean and refer to discussing, mentioning, constituting, referencing, inferring, evidencing, or concerning.

4. The term “DESCRIPTION,” when used with respect to a DOCUMENT, means the DOCUMENT’s date, title, the name of the person or entity that created the DOCUMENT, the number of pages of the DOCUMENT and the Bates number of the DOCUMENT.

5. Unless otherwise noted, when used with respect to a natural person or entity, the term “IDENTIFY” means state the name, address, and telephone number of the person or entity.

5. The term “SUBJECT PHOTOGRAPH” shall mean the photograph and/or the image contained in the photograph whose copyright YOU contend Defendant and Cross-Claimant Thierry Guetta infringed upon, which is the subject of the instant action.

III. INTERROGATORIES AT ISSUE

INTERROGATORY NO. 6:

IDENTIFY each and every effort YOU have taken to generate monies with respect to the SUBJECT photograph. For purposes of this interrogatory, IDENTIFY shall mean (a) all advertising efforts YOU took with respect to the SUBJECT PHOTOGRAPH, (b) the dates, parties and a description of all discussions YOU had with anyone regarding the licensing or sale of the SUBJECT PHOTOGRAPH, (c) the dollar amount YOU suggested for the sale, license or use of the SUBJECT PHOTOGRAPH, and (d) a DESCRIPTION of all DOCUMENTS that RELATE OR REFER TO each and every effort YOU have taken to generate monies with respect to the SUBJECT photograph.

RESPONSE:

Objection. Vague and ambiguous so as to be unintelligible and contains unrelated subparts. Moreover this Interrogatory seeks information that is protected by Plaintiff's right to privacy.

//

SUPPLEMENTAL RESPONSE:

Plaintiff incorporates by reference all prior objections and responses and provides the following supplemental response: The SUBJECT IMAGE was widely displayed all over the world from 1994-2010 in publicity and promotional materials for the group Run DMC as well as in publicity and promotional materials for Plaintiff's book *Fuck You Heroes; Glen E. Friedman Photographs 1976-1991*, and in exhibitions of Plaintiff's work. The SUBJECT PHOTOGRAPH appeared in the book, *Fuck You Heroes; Glen E. Friedman Photographs 1976-1991*, Burning Flags Press, 1994. Plaintiff receives monies for sales of this book, however, it is impossible to determine which monies are directly attributable to the SUBJECT PHOTOGRAPH.

FURTHER SUPPLEMENTAL RESPONSE:

Plaintiff incorporates by reference all prior objections and responses and provides the following supplemental response: Pursuant to FRCP 33(d), Plaintiff identifies the documents attached to Plaintiff's Supplemental Responses to Request for Production of Documents as Exhibit A. Plaintiff is not in possession of further documents or information with respect to these matters.

GUETTA'S CONTENTIONS AND PROPOSED RESOLUTION:

The information is relevant to damages and to determining whether Guetta's use of the photograph was fair pursuant to 17 U.S.C. § 107(4). Indeed, during the August 23, 2010 Scheduling Conference, Hon. Dean D. Pregerson asked whether there was any value to the Photograph. Moreover, the Complaint alleges that Friedman has suffered substantial damage to his business "in the form of diversion of trade, loss of income and profits, and a dilution of the value" of his rights. Complaint, ¶ 23. Guetta is entitled to an understanding of the value of the Photograph.

Guetta proposed that Friedman respond by indicating that Guetta's use of the Photograph did not cause Friedman any losses. Friedman's counsel indicated that it would provide a response indicating that Friedman did not suffer any losses from Guetta's use of the Photograph, other than the loss of a potential royalty payment Friedman may have

1 received had he licensed the Photograph to Guetta, but did not provide such a response.
2 Thereafter, Friedman's counsel indicated he would stipulate Friedman "suffered no loss
3 from Defendant's use of the subject photograph other than the loss of a potential royalty
4 payment he would have received had he licensed it to" Guetta, but then reneged and
5 insisted that the stipulation instead state that Friedman "waives any claim for actual
6 damages in the instant action." Id. This change in language makes a significant difference
7 in the analysis of fair use under 17 U.S.C. § 107(4) (effects of the market for and value of
8 the copyrighted work).

9 Friedman's vague and conclusory responses do not provide the information
10 requested in the interrogatory. The responses do not set forth the advertising efforts
11 Friedman undertook, his discussions regarding licensing or selling the Photograph, the
12 dollar amount for the suggested license or sale of the Photograph and/or what documents
13 showing all of his efforts to market the Photograph.

14 Friedman's reference to the documents attached as Exhibit A to his supplemental
15 responses to requests for production of documents does not shed any light on the issue.
16 A substantive response must be provided.

17 **PLAINTIFF'S CONTENTIONS:**

18 Although Plaintiff has stated unequivocally he does not have possession of any
19 further specific information sought by Defendants, Defendant still filed the instant Motion
20 to Compel seeking more information. The basis for Defendant's Motion is that, Plaintiffs'
21 responses "do not seem truthful" and he "must have" more information. First, this is not
22 a basis for a Motion to Compel. Second, this is not the case.

23 Plaintiff has never licensed the image in question for any use similar to Defendant's
24 use. The sole item wherein Plaintiff's image was licensed was a small run of promotional
25 t-shirts printed in 2003 in support of a small art show. This was disclosed in discovery.
26 Plaintiff does not have any contract with respect to these shirts, to the extent one even
27 existed. This is not uncommon. Plaintiff does not have a record as to what he was
28 promised for these shirts, if anything. This is not uncommon. Plaintiff does not have a

1 record as to what he was paid for these shirts, if anything. This is not uncommon.

2 Plaintiff does have images of the shirt, and produced them. However, Plaintiff does
3 not have royalty information sought and has produced all information in his possession,
4 custody and/or control relating to this shirt. Indeed, the only information that Plaintiff was
5 able to gather regarding these items was found on the internet. Accordingly, pursuant to
6 FRCP 33(d), Plaintiff identified and produced these documents in response to Defendant's
7 interrogatory.

8 To the extent Defendant seeks more information, he can and should subpoena the
9 third parties involved in the production of the shirt. To date Defendant has not done so.
10 However, Defendant cannot compel Plaintiff to make up information as to his royalties,
11 simply because Plaintiff does not know the answer.

12 Moreover, while Defendant's Motion mentions Plaintiff's sale of his book, Defendant
13 conceded in the parties meet and confer that evidence of Plaintiff's sales of his own book
14 (published by Plaintiff, containing only photographs take by Plaintiff and containing over
15 100 photographs), does not reveal anything whatsoever about a license fee or royalty rate
16 for use of reproduction of one image at issue in this case. Indeed, Defendant does not
17 even argue the point in the instant motion, apparently hoping the Court will make a "kitchen
18 sink" order that Plaintiff simply need to disclose all of his finances to Defendant. However,
19 the question remains, how does information relating to the sales of a 148 page book, with
20 hundreds of pictures of famous persons, tell us anything about the reasonable license fee
21 for one of the pictures contained therein? The obvious answer is, it doesn't. Information
22 regarding Plaintiff's book sales is simply not relevant, and is protected by Plaintiff's right
23 to financial privacy, and Defendant does not seriously attempt to argue otherwise.

24 For the foregoing reasons, Defendant's Motion to Compel should be denied.

25
26 **INTERROGATORY NO. 7:**

27 IDENTIFY each and every instance in which YOU received monies with respect to
28 the SUBJECT PHOTOGRAPH. For purposes of this interrogatory, IDENTIFY shall mean

(a) the date YOU received monies with respect to the SUBJECT PHOTOGRAPH, (b) the amount of money YOU received with respect to the SUBJECT PHOTOGRAPH, (c) a description of the type transaction for which YOU received any monies with respect to the SUBJECT PHOTOGRAPH (e.g. licensing, lithograph sale, book sale, etc.), (d) the person or entity from whom YOU received any monies with respect to the SUBJECT PHOTOGRAPH, and (e) a DESCRIPTION of all DOCUMENTS that RELATE OR REFER TO each and every instance in which YOU received monies with respect to the SUBJECT PHOTOGRAPH.

RESPONSE:

Objection. Vague and ambiguous so as to be unintelligible and contains unrelated subparts. Moreover this Interrogatory seeks information that is protected by Plaintiff's right to privacy.

SUPPLEMENTAL RESPONSE:

Plaintiff incorporates by reference all prior objections and responses and provides the following supplemental response: The SUBJECT IMAGE was widely displayed all over the world from 1994-2010 in publicity and promotional materials for the group Run DMC as well as in publicity and promotional materials for Plaintiff's book *Fuck You Heroes; Glen E. Friedman Photographs 1976-1991*, and in exhibitions of Plaintiff's work. The SUBJECT PHOTOGRAPH appeared in the book, *Fuck You Heroes; Glen E. Friedman Photographs 1976-1991*, Burning Flags Press, 1994. Plaintiff receives monies for sales of this book, however, it is impossible to determine which monies are directly attributable to the SUBJECT PHOTOGRAPH.

FURTHER SUPPLEMENTAL RESPONSE:

Plaintiff incorporates by reference all prior objections and responses and provides the following supplemental response: Pursuant to FRCP 33(d), Plaintiff identifies the documents attached to Plaintiff's Supplemental Responses to Request for Production of Documents as Exhibit A. Plaintiff is not in possession of further documents or information with respect to these matters.

GUETTA'S CONTENTIONS AND PROPOSED RESOLUTION:

The information is relevant to damages and to determining whether Guetta's use of the photograph was fair pursuant to 17 U.S.C. § 107(4). Indeed, during the August 23, 2010 Scheduling Conference, Hon. Dean D. Pregerson asked whether there was any value to the Photograph. Moreover, the Complaint alleges that Friedman has suffered substantial damage to his business "in the form of diversion of trade, loss of income and profits, and a dilution of the value" of his rights. Complaint, ¶ 23. Guetta is entitled to an understanding of the value of the Photograph.

Guetta proposed that Friedman respond by indicating that Guetta's use of the Photograph did not cause Friedman any losses. Friedman's counsel indicated that it would provide a response indicating that Friedman did not suffer any losses from Guetta's use of the Photograph, other than the loss of a potential royalty payment Friedman may have received had he licensed the Photograph to Guetta, but did not provide such a response. Thereafter, Friedman's counsel indicated he would stipulate Friedman "suffered no loss from Defendant's use of the subject photograph other than the loss of a potential royalty payment he would have received had he licensed it to" Guetta, but then reneged and insisted that the stipulation instead state that Friedman "waives any claim for actual damages in the instant action." Id. This change in language makes a significant difference in the analysis of fair use under 17 U.S.C. § 107(4) (effects of the market for and value of the copyrighted work).

Friedman's vague and conclusory responses do not provide the information requested in the interrogatory. The responses do not set forth the instances wherein Friedman received monies relating to the Photograph.

Friedman's reference to the documents attached as Exhibit A to his supplemental responses to requests for production of documents does not shed any light on the issue. Additionally, Friedman must have additional information as to monies he received in connection with the Photograph. A substantive response must be provided.

//

PLAINTIFF'S CONTENTIONS:

Although Plaintiff has stated unequivocally he does not have possession of any further specific information sought by Defendants, Defendant still filed the instant Motion to Compel seeking more information. The basis for Defendant's Motion is that, Plaintiffs' responses "do not seem truthful" and he "must have" more information. First, this is not a basis for a Motion to Compel. Second, this is not the case.

Plaintiff has never licensed the image in question for any use similar to Defendant's use. The sole item wherein Plaintiff's image was licensed was a small run of promotional t-shirts printed in 2003 in support of a small art show. This was disclosed in discovery. Plaintiff does not have any contract with respect to these shirts, to the extent one even existed. This is not uncommon. Plaintiff does not have a record as to what he was promised for these shirts, if anything. This is not uncommon. Plaintiff does not have a record as to what he was paid for these shirts, if anything. This is not uncommon.

Plaintiff does have images of the shirt, and produced them. However, Plaintiff does not have royalty information sought and has produced all information in his possession, custody and/or control relating to this shirt. Indeed, the only information that Plaintiff was able to gather regarding these items was found on the internet. Accordingly, pursuant to FRCP 33(d), Plaintiff identified and produced these documents in response to Defendant's interrogatory.

To the extent Defendant seeks more information, he can and should subpoena the third parties involved in the production of the shirt. To date Defendant has not done so. However, Defendant cannot compel Plaintiff to make up information as to his royalties, simply because Plaintiff does not know the answer.

Moreover, while Defendant's Motion mentions Plaintiff's sale of his book, Defendant conceded in the parties meet and confer that evidence of Plaintiff's sales of his own book (published by Plaintiff, containing only photographs take by Plaintiff and containing over 100 photographs), does not reveal anything whatsoever about a license fee or royalty rate for use of reproduction of one image at issue in this case. Indeed, Defendant does not

1 even argue the point in the instant motion, apparently hoping the Court will make a “kitchen
2 sink” order that Plaintiff simply need to disclose all of his finances to Defendant. However,
3 the question remains, how does information relating to the sales of a 148 page book, with
4 hundreds of pictures of famous persons, tell us anything about the reasonable license fee
5 for one of the pictures contained therein? The obvious answer is, it doesn’t. Information
6 regarding Plaintiff’s book sales is simply not relevant, and is protected by Plaintiff’s right
7 to financial privacy, and Defendant does not seriously attempt to argue otherwise.

8 For the foregoing reasons, Defendant’s Motion to Compel should be denied.
9

10 **INTERROGATORY NO. 8:**

11 IDENTIFY each and every instance in which a lithograph and/or reproduction of the
12 SUBJECT PHOTOGRAPH was sold. For purposes of this interrogatory, IDENTIFY shall
13 mean, (a) the date any lithograph and/or reproduction of the SUBJECT PHOTOGRAPH
14 was sold, (b) the dollar amount for which the lithograph or reproduction of the SUBJECT
15 PHOTOGRAPH was sold, (c) the name, address and telephone number of each and every
16 person and/or entity that purchased a lithograph or reproduction of the SUBJECT
17 PHOTOGRAPH, and (d) a DESCRIPTION of all DOCUMENTS that RELATE OR REFER
18 TO each and every instance in which a lithograph and/or reproduction of the SUBJECT
19 PHOTOGRAPH was sold.

20 **RESPONSE:**

21 Objection. Vague and ambiguous so as to be unintelligible and contains unrelated
22 subparts. Moreover this Interrogatory seeks information that is protected by Plaintiff’s right
23 to privacy.

24 [No Supplemental Response was provided.]

25 **FURTHER SUPPLEMENTAL RESPONSE:**

26 Plaintiff incorporates by reference all prior objections and responses and provides
27 the following supplemental response: Pursuant to FRCP 33(d), Plaintiff identifies the
28 documents attached to Plaintiff’s Supplemental Responses to Request for Production of

Documents as Exhibit A. Plaintiff is not in possession of further documents or information with respect to these matters.

GUETTA'S CONTENTIONS AND PROPOSED RESOLUTION:

The information is relevant to damages and to determining whether Guetta's use of the photograph was fair pursuant to 17 U.S.C. § 107(4). Indeed, during the August 23, 2010 Scheduling Conference, Hon. Dean D. Pregerson asked whether there was any value to the Photograph. Moreover, the Complaint alleges that Friedman has suffered substantial damage to his business "in the form of diversion of trade, loss of income and profits, and a dilution of the value" of his rights. Complaint, ¶ 23. Guetta is entitled to an understanding of the value of the Photograph.

Guetta proposed that Friedman respond by indicating that Guetta's use of the Photograph did not cause Friedman any losses. Friedman's counsel indicated that it would provide a response indicating that Friedman did not suffer any losses from Guetta's use of the Photograph, other than the loss of a potential royalty payment Friedman may have received had he licensed the Photograph to Guetta, but did not provide such a response. Thereafter, Friedman's counsel indicated he would stipulate Friedman "suffered no loss from Defendant's use of the subject photograph other than the loss of a potential royalty payment he would have received had he licensed it to" Guetta, but then reneged and insisted that the stipulation instead state that Friedman "waives any claim for actual damages in the instant action." Id. This change in language makes a significant difference in the analysis of fair use under 17 U.S.C. § 107(4) (effects of the market for and value of the copyrighted work).

Friedman's vague and conclusory responses do not provide the information requested in the interrogatory. The responses do not set forth the instances wherein lithographs or reproductions of the Photograph were sold.

Friedman's reference to the documents attached as Exhibit A to his supplemental responses to requests for production of documents does not shed any light on the issue. Additionally, Friedman must have additional information as to monies he received in

1 connection with the Photograph. A substantive response must be provided.

2 **PLAINTIFF'S CONTENTIONS:**

3 Although Plaintiff has stated unequivocally he does not have possession of any
4 further specific information sought by Defendants, Defendant still filed the instant Motion
5 to Compel seeking more information. The basis for Defendant's Motion is that, Plaintiffs'
6 responses "do not seem truthful" and he "must have" more information. First, this is not
7 a basis for a Motion to Compel. Second, this is not the case.

8 Plaintiff has never licensed the image in question for any use similar to Defendant's
9 use. The sole item wherein Plaintiff's image was licensed was a small run of promotional
10 t-shirts printed in 2003 in support of a small art show. This was disclosed in discovery.
11 Plaintiff does not have any contract with respect to these shirts, to the extent one even
12 existed. This is not uncommon. Plaintiff does not have a record as to what he was
13 promised for these shirts, if anything. This is not uncommon. Plaintiff does not have a
14 record as to what he was paid for these shirts, if anything. This is not uncommon.

15 Plaintiff does have images of the shirt, and produced them. However, Plaintiff does
16 not have royalty information sought and has produced all information in his possession,
17 custody and/or control relating to this shirt. Indeed, the only information that Plaintiff was
18 able to gather regarding these items was found on the internet. Accordingly, pursuant to
19 FRCP 33(d), Plaintiff identified and produced these documents in response to Defendant's
20 interrogatory.

21 To the extent Defendant seeks more information, he can and should subpoena the
22 third parties involved in the production of the shirt. To date Defendant has not done so.
23 However, Defendant cannot compel Plaintiff to make up information as to his royalties,
24 simply because Plaintiff does not know the answer.

25 Moreover, while Defendant's Motion mentions Plaintiff's sale of his book, Defendant
26 conceded in the parties meet and confer that evidence of Plaintiff's sales of his own book
27 (published by Plaintiff, containing only photographs take by Plaintiff and containing over
28 100 photographs), does not reveal anything whatsoever about a license fee or royalty rate

1 for use of reproduction of one image at issue in this case. Indeed, Defendant does not
2 even argue the point in the instant motion, apparently hoping the Court will make a “kitchen
3 sink” order that Plaintiff simply need to disclose all of his finances to Defendant. However,
4 the question remains, how does information relating to the sales of a 148 page book, with
5 hundreds of pictures of famous persons, tell us anything about the reasonable license fee
6 for one of the pictures contained therein? The obvious answer is, it doesn’t. Information
7 regarding Plaintiff’s book sales is simply not relevant, and is protected by Plaintiff’s right
8 to financial privacy, and Defendant does not seriously attempt to argue otherwise.

9 For the foregoing reasons, Defendant’s Motion to Compel should be denied.

10
11 **INTERROGATORY NO. 9:**

12 State YOUR gross and net profits generated from the SUBJECT PHOTOGRAPH
13 and how those amounts were calculated.

14 **RESPONSE:**

15 Objection. Vague and ambiguous so as to be unintelligible and contains unrelated
16 subparts. Moreover this Interrogatory seeks information that is protected by Plaintiff’s right
17 to privacy.

18 **SUPPLEMENTAL RESPONSE:**

19 Plaintiff incorporates by reference all prior objections and responses and provides
20 the following supplemental response: The SUBJECT IMAGE was widely displayed all over
21 the workd from 1994-2010 in publicity and promotional materials for the group Run DMC
22 as well as in publicity and promotional materials for Plaintiff’s book *Fuck You Heroes; Glen*
23 *E. Friedman Photographs 1976-1991*, and in exhibitions of Plaintiff’s work. The SUBJECT
24 PHOTOGRAPH appeared in the book, *Fuck You Heroes; Glen E. Friedman Photographs*
25 *1976-1991*, Burning Flags Press, 1994. Plaintiff receives monies for sales of this book,
26 however, it is impossible to determine which monies are directly attributable to the
27 SUBJECT PHOTOGRAPH.

28 //

FURTHER SUPPLEMENTAL RESPONSE:

Plaintiff incorporates by reference all prior objections and responses and provides the following supplemental response: Pursuant to FRCP 33(d), Plaintiff identifies the documents attached to Plaintiff's Supplemental Responses to Request for Production of Documents as Exhibit A. Plaintiff is not in possession of further documents or information with respect to these matters.

GUETTA'S CONTENTIONS AND PROPOSED RESOLUTION:

The information is relevant to damages and to determining whether Guetta's use of the photograph was fair pursuant to 17 U.S.C. § 107(4). Indeed, during the August 23, 2010 Scheduling Conference, Hon. Dean D. Pregerson asked whether there was any value to the Photograph. Moreover, the Complaint alleges that Friedman has suffered substantial damage to his business "in the form of diversion of trade, loss of income and profits, and a dilution of the value" of his rights. Complaint, ¶ 23. Guetta is entitled to an understanding of the value of the Photograph.

Guetta proposed that Friedman respond by indicating that Guetta's use of the Photograph did not cause Friedman any losses. Friedman's counsel indicated that it would provide a response indicating that Friedman did not suffer any losses from Guetta's use of the Photograph, other than the loss of a potential royalty payment Friedman may have received had he licensed the Photograph to Guetta, but did not provide such a response. Thereafter, Friedman's counsel indicated he would stipulate Friedman "suffered no loss from Defendant's use of the subject photograph other than the loss of a potential royalty payment he would have received had he licensed it to" Guetta, but then reneged and insisted that the stipulation instead state that Friedman "waives any claim for actual damages in the instant action." Id. This change in language makes a significant difference in the analysis of fair use under 17 U.S.C. § 107(4) (effects of the market for and value of the copyrighted work).

Friedman's vague and conclusory responses do not provide the information requested in the interrogatory. The responses do not set forth Friedman's profits from the

1 Photograph and how they were calculated.

2 Friedman's reference to the documents attached as Exhibit A to his supplemental
3 responses to requests for production of documents does not shed any light on the issue.
4 Additionally, Friedman must have additional information as to monies he received in
5 connection with the Photograph. A substantive response must be provided.

6 **PLAINTIFF'S CONTENTIONS:**

7 Although Plaintiff has stated unequivocally he does not have possession of any
8 further specific information sought by Defendants, Defendant still filed the instant Motion
9 to Compel seeking more information. The basis for Defendant's Motion is that, Plaintiffs'
10 responses "do not seem truthful" and he "must have" more information. First, this is not
11 a basis for a Motion to Compel. Second, this is not the case.

12 Plaintiff has never licensed the image in question for any use similar to Defendant's
13 use. The sole item wherein Plaintiff's image was licensed was a small run of promotional
14 t-shirts printed in 2003 in support of a small art show. This was disclosed in discovery.
15 Plaintiff does not have any contract with respect to these shirts, to the extent one even
16 existed. This is not uncommon. Plaintiff does not have a record as to what he was
17 promised for these shirts, if anything. This is not uncommon. Plaintiff does not have a
18 record as to what he was paid for these shirts, if anything. This is not uncommon.

19 Plaintiff does have images of the shirt, and produced them. However, Plaintiff does
20 not have royalty information sought and has produced all information in his possession,
21 custody and/or control relating to this shirt. Indeed, the only information that Plaintiff was
22 able to gather regarding these items was found on the internet. Accordingly, pursuant to
23 FRCP 33(d), Plaintiff identified and produced these documents in response to Defendant's
24 interrogatory.

25 To the extent Defendant seeks more information, he can and should subpoena the
26 third parties involved in the production of the shirt. To date Defendant has not done so.
27 However, Defendant cannot compel Plaintiff to make up information as to his royalties,
28 simply because Plaintiff does not know the answer.

1 Moreover, while Defendant's Motion mentions Plaintiff's sale of his book, Defendant
2 conceded in the parties meet and confer that evidence of Plaintiff's sales of his own book
3 (published by Plaintiff, containing only photographs take by Plaintiff and containing over
4 100 photographs), does not reveal anything whatsoever about a license fee or royalty rate
5 for use of reproduction of one image at issue in this case. Indeed, Defendant does not
6 even argue the point in the instant motion, apparently hoping the Court will make a "kitchen
7 sink" order that Plaintiff simply need to disclose all of his finances to Defendant. However,
8 the question remains, how does information relating to the sales of a 148 page book, with
9 hundreds of pictures of famous persons, tell us anything about the reasonable license fee
10 for one of the pictures contained therein? The obvious answer is, it doesn't. Information
11 regarding Plaintiff's book sales is simply not relevant, and is protected by Plaintiff's right
12 to financial privacy, and Defendant does not seriously attempt to argue otherwise.

13 For the foregoing reasons, Defendant's Motion to Compel should be denied.
14

15 **IV. REQUESTS FOR PRODUCTION OF DOCUMENTS AT ISSUE**

16 **REQUEST FOR PRODUCTION OF DOCUMENTS NO. 18:**

17 All DOCUMENTS that RELATE OR REFER TO any monies you have ever received
18 in connection with the SUBJECT PHOTOGRAPH.

19 **RESPONSE:**

20 Objection. Overbroad and unduly burdensome. Further objection: This Request
21 seeks documents protected by Plaintiff's right to privacy. Not relevant, nor likely to lead to
22 the discovery of admissible evidence. Subject to and without waiving this objection, Plaintiff
23 responds: The SUBJECT PHOTOGRAPH was widely displayed all over the world from
24 1994-2010 in publicity and promotional materials for the group Run DMC as well as in
25 publicity and promotional materials for Plaintiff's book *Fuck You Heroes; Glen E. Friedman*
26 *Photographs 1976-1991*, and in exhibitions of Plaintiff's work. The SUBJECT
27 PHOTOGRAPH appeared in the book, *Fuck You Heroes; Glen E. Friedman Photographs*
28 *1976-1991*, Burning Flags Press, 1994. Plaintiff receives monies for sales of this book,

1 however, it is impossible to determine which monies are directly attributable to the
2 SUBJECT PHOTOGRAPH.

3 **SUPPLEMENTAL RESPONSE:**

4 Plaintiff incorporates by reference all prior objections and responses and provides
5 the following supplemental response: Plaintiff produces the documents attached as Exhibit
6 A.

7 **GUETTA'S CONTENTIONS AND PROPOSED RESOLUTION:**

8 The information is relevant to damages and to determining whether Guetta's use
9 of the photograph was fair pursuant to 17 U.S.C. § 107(4). Indeed, during the August 23,
10 2010 Scheduling Conference, Hon. Dean D. Pregerson asked whether there was any value
11 to the Photograph. Moreover, the Complaint alleges that Friedman has suffered substantial
12 damage to his business "in the form of diversion of trade, loss of income and profits, and
13 a dilution of the value" of his rights. Complaint, ¶ 23. Guetta is entitled to an understanding
14 of the value of the Photograph. The response fails to comply with the provisions of
15 Fed.R.Civ.P. 34, which require a responding party to indicate whether the inspection
16 activities will be permitted or not.

17 Guetta proposed that Friedman respond by indicating that Guetta's use of the
18 Photograph did not cause Friedman any losses. Friedman's counsel indicated that it would
19 provide a response indicating that Friedman did not suffer any losses from Guetta's use
20 of the Photograph, other than the loss of a potential royalty payment Friedman may have
21 received had he licensed the Photograph to Guetta, but did not provide such a response.
22 Thereafter, Friedman's counsel indicated he would stipulate Friedman "suffered no loss
23 from Defendant's use of the subject photograph other than the loss of a potential royalty
24 payment he would have received had he licensed it to" Guetta, but then reneged and
25 insisted that the stipulation instead state that Friedman "waives any claim for actual
26 damages in the instant action." Id. This change in language makes a significant difference
27 in the analysis of fair use under 17 U.S.C. § 107(4) (effects of the market for and value of
28 the copyrighted work).

1 The response provided by Friedman does not indicate whether he has produced all
2 responsive documents or not and therefore fails to indicate whether the inspection is being
3 permitted. Clearly, Friedman has not produced all responsive documents as he has
4 asserted that he received monies in connection with the sale of a book that includes the
5 Photograph. Accordingly, Guetta is entitled to the documents showing those monies and
6 any other monies relating to the Photograph.

7 **PLAINTIFF'S CONTENTIONS:**

8 Although Plaintiff has stated unequivocally this Request is overbroad and he does
9 not have possession of any further specific information sought by Defendants, Defendant
10 still filed the instant Motion to Compel seeking more information. The basis for Defendant's
11 Motion is that, Plaintiffs' responses "do not seem truthful" and he "must have" more
12 information. First, this is not a basis for a Motion to Compel. Second, this is not the case.

13 Plaintiff has never licensed the image in question for any use similar to Defendant's
14 use. The sole item wherein Plaintiff's image was licensed was a small run of promotional
15 t-shirts printed in 2003 in support of a small art show. Plaintiff does not have any contract
16 with respect to these shirts, to the extent one even existed. This is not uncommon.
17 Plaintiff does not have a record as to what he was promised for these shirts, if anything.
18 This is not uncommon. Plaintiff does not have a record as to what he was paid for these
19 shirts, if anything. This is not uncommon.

20 Plaintiff does have images of the shirt, and produced them. However, Plaintiff does
21 not have royalty information sought and has produced all information in his possession,
22 custody and/or control relating to this shirt. Indeed, the only information that Plaintiff was
23 able to gather regarding these items was found on the internet.

24 To the extent Defendant seeks more information, he can and should subpoena the
25 third parties involved in the production of the shirt. To date Defendant has not done so.
26 However, Defendant cannot compel Plaintiff to make up information as to his royalties,
27 simply because Plaintiff does not know the answer.

28 Moreover, while Defendant's Motion elsewhere mentions Plaintiff's sale of his book,

1 it does not here. To the extent Defendant seeks information relating to Plaintiffs book
2 sales, it is plainly overbroad and invasive of Plaintiff's right to privacy and should be denied
3 for the same reasons as set forth above.

4
5 **REQUEST FOR PRODUCTION OF DOCUMENTS NO. 25:**

6 All DOCUMENTS that RELATE OR REFER TO any efforts YOU have taken to
7 generate monies with respect to the SUBJECT photograph.

8 **RESPONSE:**

9 Objection. Vague and ambiguous as to the phrase "efforts YOU have taken to
10 generate monies." Further objection; overbroad and unduly burdensome. Subject to and
11 without waiving this objection, Plaintiff responds: The SUBJECT PHOTOGRAPH was
12 widely displayed all over the workd from 1994-2010 in publicity and promotional materials
13 for the group Run DMC as well as in publicity and promotional materials for Plaintiff's book
14 *Fuck You Heroes; Glen E. Friedman Photographs 1976-1991*, and in exhibitions of
15 Plaintiff's work. The SUBJECT PHOTOGRAPH appeared in the book, *Fuck You Heroes;*
16 *Glen E. Friedman Photographs 1976-1991*, Burning Flags Press, 1994. Plaintiff receives
17 monies for sales of this book, however, it is impossible to determine which monies are
18 directly attributable to the SUBJECT PHOTOGRAPH.

19 **SUPPLEMENTAL RESPONSE:**

20 Plaintiff incorporates by reference all prior objections and responses and provides
21 the following supplemental response: Plaintiff produces the documents attached as Exhibit
22 A.

23 **GUETTA'S CONTENTIONS AND PROPOSED RESOLUTION:**

24 The information is relevant to damages and to determining whether Guetta's use
25 of the photograph was fair pursuant to 17 U.S.C. § 107(4). Indeed, during the August 23,
26 2010 Scheduling Conference, Hon. Dean D. Pregerson asked whether there was any value
27 to the Photograph. Moreover, the Complaint alleges that Friedman has suffered substantial
28 damage to his business "in the form of diversion of trade, loss of income and profits, and

1 a dilution of the value” of his rights. Complaint, ¶ 23. Guetta is entitled to an understanding
2 of the value of the Photograph. The response fails to comply with the provisions of
3 Fed.R.Civ.P. 34, which require a responding party to indicate whether the inspection
4 activities will be permitted or not.

5 Guetta proposed that Friedman respond by indicating that Guetta’s use of the
6 Photograph did not cause Friedman any losses. Friedman’s counsel indicated that it would
7 provide a response indicating that Friedman did not suffer any losses from Guetta’s use
8 of the Photograph, other than the loss of a potential royalty payment Friedman may have
9 received had he licensed the Photograph to Guetta, but did not provide such a response.
10 Thereafter, Friedman’s counsel indicated he would stipulate Friedman “suffered no loss
11 from Defendant’s use of the subject photograph other than the loss of a potential royalty
12 payment he would have received had he licensed it to” Guetta, but then reneged and
13 insisted that the stipulation instead state that Friedman “waives any claim for actual
14 damages in the instant action.” Id. This change in language makes a significant difference
15 in the analysis of fair use under 17 U.S.C. § 107(4) (effects of the market for and value of
16 the copyrighted work).

17 The response provided by Friedman does not indicate whether he has produced all
18 responsive documents or not and therefore fails to indicate whether the inspection is being
19 permitted. The attached documents do not demonstrate Friedman’s attempts to generate
20 monies with respect to the Photograph. Documents such as correspondence
21 demonstrating Friedman’s attempts have not been produced.

22 **PLAINTIFF’S CONTENTIONS:**

23 Although Plaintiff has stated unequivocally this Request is overbroad and he does
24 not have possession of any further specific information sought by Defendants, Defendant
25 still filed the instant Motion to Compel seeking more information. The basis for Defendant’s
26 Motion is that, Plaintiffs’ responses “do not seem truthful” and he “must have” more
27 information. First, this is not a basis for a Motion to Compel. Second, this is not the case.

28 Plaintiff has never licensed the image in question for any use similar to Defendant’s

1 use. The sole item wherein Plaintiff's image was licensed was a small run of promotional
2 t-shirts printed in 2003 in support of a small art show. Plaintiff does not have any contract
3 with respect to these shirts, to the extent one even existed. This is not uncommon.
4 Plaintiff does not have a record as to what he was promised for these shirts, if anything.
5 This is not uncommon. Plaintiff does not have a record as to what he was paid for these
6 shirts, if anything. This is not uncommon.

7 Plaintiff does have images of the shirt, and produced them. However, Plaintiff does
8 not have royalty information sought and has produced all information in his possession,
9 custody and/or control relating to this shirt. Indeed, the only information that Plaintiff was
10 able to gather regarding these items was found on the internet.

11 To the extent Defendant seeks more information, he can and should subpoena the
12 third parties involved in the production of the shirt. To date Defendant has not done so.
13 However, Defendant cannot compel Plaintiff to make up information as to his royalties,
14 simply because Plaintiff does not know the answer.

15 Moreover, while Defendant's Motion elsewhere mentions Plaintiff's sale of his book,
16 it does not here. To the extent Defendant seeks information relating to Plaintiff's book
17 sales, it is plainly overbroad and invasive of Plaintiff's right to privacy and should be denied
18 for the same reasons as set forth above.

19
20 **REQUEST FOR PRODUCTION OF DOCUMENTS NO. 26:**

21 All DOCUMENTS that RELATE OR REFER TO any efforts YOU have taken to
22 license the SUBJECT PHOTOGRAPH.

23 **RESPONSE:**

24 Objection. Vague and ambiguous so as to be unintelligible, fails to describe with
25 reasonable particularity each item or category of items to be inspected is overbroad, unduly
26 burdensome, invades Plaintiff's right to privacy and seeks documents not relevant to any
27 claim or defense in this matter, to the extent it seeks documents that did not result in a
28 license. Subject to and without waiving this objection, Plaintiff responds: The SUBJECT

1 PHOTOGRAPH was widely displayed all over the world from 1994-2010 in publicity and
2 promotional materials for the group Run DMC as well as in publicity and promotional
3 materials for Plaintiff's book *Fuck You Heroes; Glen E. Friedman Photographs 1976-1991*,
4 and in exhibitions of Plaintiff's work. Plaintiff further identifies Plaintiff's book, *Fuck You*
5 *Heroes; Glen E. Friedman Photographs 1976-1991* which is equally available to
6 propounding party.

7 **SUPPLEMENTAL RESPONSE:**

8 Plaintiff incorporates by reference all prior objections and responses and provides
9 the following supplemental response: Plaintiff produces the documents attached as Exhibit
10 A.

11 **GUETTA'S CONTENTIONS AND PROPOSED RESOLUTION:**

12 The information is relevant to damages and to determining whether Guetta's use
13 of the photograph was fair pursuant to 17 U.S.C. § 107(4). Indeed, during the August 23,
14 2010 Scheduling Conference, Hon. Dean D. Pregerson asked whether there was any value
15 to the Photograph. Moreover, the Complaint alleges that Friedman has suffered substantial
16 damage to his business "in the form of diversion of trade, loss of income and profits, and
17 a dilution of the value" of his rights. Complaint, ¶ 23. Guetta is entitled to an understanding
18 of the value of the Photograph. The response fails to comply with the provisions of
19 Fed.R.Civ.P. 34, which require a responding party to indicate whether the inspection
20 activities will be permitted or not.

21 Guetta proposed that Friedman respond by indicating that Guetta's use of the
22 Photograph did not cause Friedman any losses. Friedman's counsel indicated that it would
23 provide a response indicating that Friedman did not suffer any losses from Guetta's use
24 of the Photograph, other than the loss of a potential royalty payment Friedman may have
25 received had he licensed the Photograph to Guetta, but did not provide such a response.
26 Thereafter, Friedman's counsel indicated he would stipulate Friedman "suffered no loss
27 from Defendant's use of the subject photograph other than the loss of a potential royalty
28 payment he would have received had he licensed it to" Guetta, but then reneged and

1 insisted that the stipulation instead state that Friedman “waives any claim for actual
2 damages in the instant action.” Id. This change in language makes a significant difference
3 in the analysis of fair use under 17 U.S.C. § 107(4) (effects of the market for and value of
4 the copyrighted work).

5 The response provided by Friedman does not indicate whether he has produced all
6 responsive documents or not and therefore fails to indicate whether the inspection is being
7 permitted. The attached documents do not demonstrate Friedman’s attempts to license the
8 Photograph. Documents such as correspondence demonstrating Friedman’s attempts have
9 not been produced. The objections based on privacy and relevance to the extent the
10 document requests seek documents that did not result in a license is not well taken as
11 Friedman’s efforts to market the photograph, whether they resulted in a license or not, are
12 directly relevant to this action that he initiated.

13 **PLAINTIFF’S CONTENTIONS:**

14 Although Plaintiff has stated unequivocally this Request is overbroad and he does
15 not have possession of any further specific information sought by Defendants, Defendant
16 still filed the instant Motion to Compel seeking more information. The basis for Defendant’s
17 Motion is that, Plaintiffs’ responses “do not seem truthful” and he “must have” more
18 information. First, this is not a basis for a Motion to Compel. Second, this is not the case.

19 Plaintiff has never licensed the image in question for any use similar to Defendant’s
20 use. The sole item wherein Plaintiff’s image was licensed was a small run of promotional
21 t-shirts printed in 2003 in support of a small art show. Plaintiff does not have any contract
22 with respect to these shirts, to the extent one even existed. This is not uncommon.
23 Plaintiff does not have a record as to what he was promised for these shirts, if anything.
24 This is not uncommon. Plaintiff does not have a record as to what he was paid for these
25 shirts, if anything. This is not uncommon.

26 Plaintiff does have images of the shirt, and produced them. However, Plaintiff does
27 not have royalty information sought and has produced all information in his possession,
28 custody and/or control relating to this shirt. Indeed, the only information that Plaintiff was

1 able to gather regarding these items was found on the internet.

2 To the extent Defendant seeks more information, he can and should subpoena the
3 third parties involved in the production of the shirt. To date Defendant has not done so.
4 However, Defendant cannot compel Plaintiff to make up information as to his royalties,
5 simply because Plaintiff does not know the answer.

6 Moreover, while Defendant's Motion elsewhere mentions Plaintiff's sale of his book,
7 it does not here. To the extent Defendant seeks information relating to Plaintiff's book
8 sales, it is plainly overbroad and invasive of Plaintiff's right to privacy and should be denied
9 for the same reasons as set forth above.

10
11 **REQUEST FOR PRODUCTION OF DOCUMENTS NO. 28:**

12 All DOCUMENTS that RELATE OR REFER TO any efforts YOU have taken to sell
13 any lithographs and/or reproductions the SUBJECT PHOTOGRAPH.

14 **RESPONSE:**

15 Objection. Vague and ambiguous so as to be unintelligible, fails to describe with
16 reasonable particularity each item or category of items to be inspected is overbroad, unduly
17 burdensome, invades Plaintiff's right to privacy and seeks documents not relevant to any
18 claim or defense in this matter, to the extent it seeks documents that did not result in a
19 license. Subject to and without waiving this objection, Plaintiff responds: The SUBJECT
20 PHOTOGRAPH was widely displayed all over the world from 1994-2010 in publicity and
21 promotional materials for the group Run DMC as well as in publicity and promotional
22 materials for Plaintiff's book *Fuck You Heroes; Glen E. Friedman Photographs 1976-1991*,
23 and in exhibitions of Plaintiff's work. Plaintiff further identifies Plaintiff's book, *Fuck You*
24 *Heroes; Glen E. Friedman Photographs 1976-1991* which is equally available to
25 propounding party.

26 **SUPPLEMENTAL RESPONSE:**

27 Plaintiff incorporates by reference all prior objections and responses and provides
28 the following supplemental response: Plaintiff produces the documents attached as Exhibit

1 A.

2 **GUETTA'S CONTENTIONS AND PROPOSED RESOLUTION:**

3 The information is relevant to damages and to determining whether Guetta's use
4 of the photograph was fair pursuant to 17 U.S.C. § 107(4). Indeed, during the August 23,
5 2010 Scheduling Conference, Hon. Dean D. Pregerson asked whether there was any value
6 to the Photograph. Moreover, the Complaint alleges that Friedman has suffered substantial
7 damage to his business "in the form of diversion of trade, loss of income and profits, and
8 a dilution of the value" of his rights. Complaint, ¶ 23. Guetta is entitled to an understanding
9 of the value of the Photograph. The response fails to comply with the provisions of
10 Fed.R.Civ.P. 34, which require a responding party to indicate whether the inspection
11 activities will be permitted or not.

12 Guetta proposed that Friedman respond by indicating that Guetta's use of the
13 Photograph did not cause Friedman any losses. Friedman's counsel indicated that it would
14 provide a response indicating that Friedman did not suffer any losses from Guetta's use
15 of the Photograph, other than the loss of a potential royalty payment Friedman may have
16 received had he licensed the Photograph to Guetta, but did not provide such a response.
17 Thereafter, Friedman's counsel indicated he would stipulate Friedman "suffered no loss
18 from Defendant's use of the subject photograph other than the loss of a potential royalty
19 payment he would have received had he licensed it to" Guetta, but then reneged and
20 insisted that the stipulation instead state that Friedman "waives any claim for actual
21 damages in the instant action." Id. This change in language makes a significant difference
22 in the analysis of fair use under 17 U.S.C. § 107(4) (effects of the market for and value of
23 the copyrighted work).

24 The response provided by Friedman does not indicate whether he has produced all
25 responsive documents or not and therefore fails to indicate whether the inspection is being
26 permitted. The attached documents do not demonstrate Friedman's attempts to sell
27 reproductions of the Photograph. Documents such as correspondence demonstrating
28 Friedman's attempts have not been produced. The objections based on privacy and

1 relevance to the extent the document requests seek documents that did not result in a
2 license is not well taken as Friedman's efforts to market the photograph, whether they
3 resulted in a license or not, are directly relevant to this action that he initiated.

4 **PLAINTIFF'S CONTENTIONS:**

5 Although Plaintiff has stated unequivocally this Request is overbroad and he does
6 not have possession of any further specific information sought by Defendants, Defendant
7 still filed the instant Motion to Compel seeking more information. The basis for Defendant's
8 Motion is that, Plaintiffs' responses "do not seem truthful" and he "must have" more
9 information. First, this is not a basis for a Motion to Compel. Second, this is not the case.

10 Plaintiff has never licensed the image in question for any use similar to Defendant's
11 use. The sole item wherein Plaintiff's image was licensed was a small run of promotional
12 t-shirts printed in 2003 in support of a small art show. Plaintiff does not have any contract
13 with respect to these shirts, to the extent one even existed. This is not uncommon.
14 Plaintiff does not have a record as to what he was promised for these shirts, if anything.
15 This is not uncommon. Plaintiff does not have a record as to what he was paid for these
16 shirts, if anything. This is not uncommon.

17 Plaintiff does have images of the shirt, and produced them. However, Plaintiff does
18 not have royalty information sought and has produced all information in his possession,
19 custody and/or control relating to this shirt. Indeed, the only information that Plaintiff was
20 able to gather regarding these items was found on the internet.

21 To the extent Defendant seeks more information, he can and should subpoena the
22 third parties involved in the production of the shirt. To date Defendant has not done so.
23 However, Defendant cannot compel Plaintiff to make up information as to his royalties,
24 simply because Plaintiff does not know the answer.

25 Moreover, while Defendant's Motion elsewhere mentions Plaintiff's sale of his book,
26 it does not here. To the extent Defendant seeks information relating to Plaintiffs book
27 sales, it is plainly overbroad and invasive of Plaintiff's right to privacy and should be denied
28 for the same reasons as set forth above.

REQUEST FOR PRODUCTION OF DOCUMENTS NO. 30:

All DOCUMENTS that RELATE OR REFER TO any efforts YOU have taken to sell any products that incorporate the SUBJECT PHOTOGRAPH including, but not limited to, any books, apparel and/or other merchandise.

RESPONSE:

Objection. Vague and ambiguous so as to be unintelligible, fails to describe with reasonable particularity each item or category of items to be inspected is overbroad, unduly burdensome, invades Plaintiff's right to privacy and seeks documents not relevant to any claim or defense in this matter, to the extent it seeks documents that did not result in a license. Subject to and without waiving this objection, Plaintiff responds: The SUBJECT PHOTOGRAPH was widely displayed all over the world from 1994-2010 in publicity and promotional materials for the group Run DMC as well as in publicity and promotional materials for Plaintiff's book *Fuck You Heroes; Glen E. Friedman Photographs 1976-1991*, and in exhibitions of Plaintiff's work. Plaintiff further identifies Plaintiff's book, *Fuck You Heroes; Glen E. Friedman Photographs 1976-1991* which is equally available to propounding party.

SUPPLEMENTAL RESPONSE:

Plaintiff incorporates by reference all prior objections and responses and provides the following supplemental response: Plaintiff produces the documents attached as Exhibit A.

GUETTA'S CONTENTIONS AND PROPOSED RESOLUTION:

The information is relevant to damages and to determining whether Guetta's use of the photograph was fair pursuant to 17 U.S.C. § 107(4). Indeed, during the August 23, 2010 Scheduling Conference, Hon. Dean D. Pregerson asked whether there was any value to the Photograph. Moreover, the Complaint alleges that Friedman has suffered substantial damage to his business "in the form of diversion of trade, loss of income and profits, and a dilution of the value" of his rights. Complaint, ¶ 23. Guetta is entitled to an understanding of the value of the Photograph. The response fails to comply with the provisions of

1 Fed.R.Civ.P. 34, which require a responding party to indicate whether the inspection
2 activities will be permitted or not.

3 Guetta proposed that Friedman respond by indicating that Guetta's use of the
4 Photograph did not cause Friedman any losses. Friedman's counsel indicated that it would
5 provide a response indicating that Friedman did not suffer any losses from Guetta's use
6 of the Photograph, other than the loss of a potential royalty payment Friedman may have
7 received had he licensed the Photograph to Guetta, but did not provide such a response.
8 Thereafter, Friedman's counsel indicated he would stipulate Friedman "suffered no loss
9 from Defendant's use of the subject photograph other than the loss of a potential royalty
10 payment he would have received had he licensed it to" Guetta, but then reneged and
11 insisted that the stipulation instead state that Friedman "waives any claim for actual
12 damages in the instant action." Id. This change in language makes a significant difference
13 in the analysis of fair use under 17 U.S.C. § 107(4) (effects of the market for and value of
14 the copyrighted work).

15 The response provided by Friedman does not indicate whether he has produced all
16 responsive documents or not and therefore fails to indicate whether the inspection is being
17 permitted. The attached documents do not demonstrate Friedman's attempts to sell
18 products that incorporate the Photograph. Documents such as correspondence
19 demonstrating Friedman's attempts have not been produced. The objections based on
20 privacy and relevance to the extent the document requests seek documents that did not
21 result in a license is not well taken as Friedman's efforts to market the photograph, whether
22 they resulted in a license or not, are directly relevant to this action that he initiated.

23 **PLAINTIFF'S CONTENTIONS:**

24 Although Plaintiff has stated unequivocally this Request is overbroad and he does
25 not have possession of any further specific information sought by Defendants, Defendant
26 still filed the instant Motion to Compel seeking more information. The basis for Defendant's
27 Motion is that, Plaintiffs' responses "do not seem truthful" and he "must have" more
28 information. First, this is not a basis for a Motion to Compel. Second, this is not the case.

1 Plaintiff has never licensed the image in question for any use similar to Defendant's
2 use. The sole item wherein Plaintiff's image was licensed was a small run of promotional
3 t-shirts printed in 2003 in support of a small art show. Plaintiff does not have any contract
4 with respect to these shirts, to the extent one even existed. This is not uncommon.
5 Plaintiff does not have a record as to what he was promised for these shirts, if anything.
6 This is not uncommon. Plaintiff does not have a record as to what he was paid for these
7 shirts, if anything. This is not uncommon.

8 Plaintiff does have images of the shirt, and produced them. However, Plaintiff does
9 not have royalty information sought and has produced all information in his possession,
10 custody and/or control relating to this shirt. Indeed, the only information that Plaintiff was
11 able to gather regarding these items was found on the internet.

12 To the extent Defendant seeks more information, he can and should subpoena the
13 third parties involved in the production of the shirt. To date Defendant has not done so.
14 However, Defendant cannot compel Plaintiff to make up information as to his royalties,
15 simply because Plaintiff does not know the answer.

16 Moreover, while Defendant's Motion elsewhere mentions Plaintiff's sale of his book,
17 it does not here. To the extent Defendant seeks information relating to Plaintiff's book
18 sales, it is plainly overbroad and invasive of Plaintiff's right to privacy and should be denied
19 for the same reasons as set forth above.

20
21 **REQUEST FOR PRODUCTION OF DOCUMENTS NO. 32:**

22 All DOCUMENTS that evidence, RELATE OR REFER TO any monies YOU
23 received for licensing the SUBJECT PHOTOGRAPH.

24 **RESPONSE:**

25 Objection. Vague and ambiguous so as to be unintelligible, fails to describe with
26 reasonable particularity each item or category of items to be inspected is overbroad, unduly
27 burdensome, invades Plaintiff's right to privacy and seeks documents not relevant to any
28 claim or defense in this matter, to the extent it seeks documents that did not result in a

1 license. Subject to and without waiving this objection, Plaintiff responds: The SUBJECT
2 PHOTOGRAPH was widely displayed all over the world from 1994-2010 in publicity and
3 promotional materials for the group Run DMC as well as in publicity and promotional
4 materials for Plaintiff's book *Fuck You Heroes; Glen E. Friedman Photographs 1976-1991*,
5 and in exhibitions of Plaintiff's work. Plaintiff further identifies Plaintiff's book, *Fuck You*
6 *Heroes; Glen E. Friedman Photographs 1976-1991* which is equally available to
7 propounding party.

8 **SUPPLEMENTAL RESPONSE:**

9 Plaintiff incorporates by reference all prior objections and responses and provides
10 the following supplemental response: Plaintiff produces the documents attached as Exhibit
11 A.

12 **GUETTA'S CONTENTIONS AND PROPOSED RESOLUTION:**

13 The information is relevant to damages and to determining whether Guetta's use
14 of the photograph was fair pursuant to 17 U.S.C. § 107(4). Indeed, during the August 23,
15 2010 Scheduling Conference, Hon. Dean D. Pregerson asked whether there was any value
16 to the Photograph. Moreover, the Complaint alleges that Friedman has suffered substantial
17 damage to his business "in the form of diversion of trade, loss of income and profits, and
18 a dilution of the value" of his rights. Complaint, ¶ 23. Guetta is entitled to an understanding
19 of the value of the Photograph. The response fails to comply with the provisions of
20 Fed.R.Civ.P. 34, which require a responding party to indicate whether the inspection
21 activities will be permitted or not.

22 Guetta proposed that Friedman respond by indicating that Guetta's use of the
23 Photograph did not cause Friedman any losses. Friedman's counsel indicated that it would
24 provide a response indicating that Friedman did not suffer any losses from Guetta's use
25 of the Photograph, other than the loss of a potential royalty payment Friedman may have
26 received had he licensed the Photograph to Guetta, but did not provide such a response.
27 Thereafter, Friedman's counsel indicated he would stipulate Friedman "suffered no loss
28 from Defendant's use of the subject photograph other than the loss of a potential royalty

1 payment he would have received had he licensed it to” Guetta, but then reneged and
2 insisted that the stipulation instead state that Friedman “waives any claim for actual
3 damages in the instant action.” Id. This change in language makes a significant difference
4 in the analysis of fair use under 17 U.S.C. § 107(4) (effects of the market for and value of
5 the copyrighted work).

6 The response provided by Friedman does not indicate whether he has produced all
7 responsive documents or not and therefore fails to indicate whether the inspection is being
8 permitted. The attached documents do not demonstrate the monies Friedman has received
9 in connection with licensing the Photograph. Documents such as licensing agreements
10 have not been produced. The objections based on privacy and relevance to the extent the
11 document requests seek documents that did not result in a license is not well taken as
12 Friedman’s efforts to market the photograph, whether they resulted in a license or not, are
13 directly relevant to this action that he initiated.

14 **PLAINTIFF’S CONTENTIONS:**

15 Although Plaintiff has stated unequivocally this Request is overbroad and he does
16 not have possession of any further specific information sought by Defendants, Defendant
17 still filed the instant Motion to Compel seeking more information. The basis for Defendant’s
18 Motion is that, Plaintiffs’ responses “do not seem truthful” and he “must have” more
19 information. First, this is not a basis for a Motion to Compel. Second, this is not the case.

20 Plaintiff has never licensed the image in question for any use similar to Defendant’s
21 use. The sole item wherein Plaintiff’s image was licensed was a small run of promotional
22 t-shirts printed in 2003 in support of a small art show. Plaintiff does not have any contract
23 with respect to these shirts, to the extent one even existed. This is not uncommon.
24 Plaintiff does not have a record as to what he was promised for these shirts, if anything.
25 This is not uncommon. Plaintiff does not have a record as to what he was paid for these
26 shirts, if anything. This is not uncommon.

27 Plaintiff does have images of the shirt, and produced them. However, Plaintiff does
28 not have royalty information sought and has produced all information in his possession,

1 custody and/or control relating to this shirt. Indeed, the only information that Plaintiff was
2 able to gather regarding these items was found on the internet.

3 To the extent Defendant seeks more information, he can and should subpoena the
4 third parties involved in the production of the shirt. To date Defendant has not done so.
5 However, Defendant cannot compel Plaintiff to make up information as to his royalties,
6 simply because Plaintiff does not know the answer.

7 Moreover, while Defendant's Motion elsewhere mentions Plaintiff's sale of his book,
8 it does not here. To the extent Defendant seeks information relating to Plaintiff's book
9 sales, it is plainly overbroad and invasive of Plaintiff's right to privacy and should be denied
10 for the same reasons as set forth above.

11
12 **REQUEST FOR PRODUCTION OF DOCUMENTS NO. 33:**

13 All DOCUMENTS that constitute, evidence, RELATE OR REFER TO any licensing
14 agreement that in any way RELATES OR REFERS TO the SUBJECT PHOTOGRAPH.

15 **RESPONSE:**

16 Objection. Vague and ambiguous so as to be unintelligible, fails to describe with
17 reasonable particularity each item or category of items to be inspected is overbroad, unduly
18 burdensome, invades Plaintiff's right to privacy and seeks documents not relevant to any
19 claim or defense in this matter, to the extent it seeks documents that did not result in a
20 license. Subject to and without waiving this objection, Plaintiff responds: The SUBJECT
21 PHOTOGRAPH was widely displayed all over the world from 1994-2010 in publicity and
22 promotional materials for the group Run DMC as well as in publicity and promotional
23 materials for Plaintiff's book *Fuck You Heroes; Glen E. Friedman Photographs 1976-1991*,
24 and in exhibitions of Plaintiff's work. Plaintiff further identifies Plaintiff's book, *Fuck You*
25 *Heroes; Glen E. Friedman Photographs 1976-1991* which is equally available to
26 propounding party.

27 **SUPPLEMENTAL RESPONSE:**

28 Plaintiff incorporates by reference all prior objections and responses and provides

1 the following supplemental response: Plaintiff produces the documents attached as Exhibit
2 A.

3 **GUETTA'S CONTENTIONS AND PROPOSED RESOLUTION:**

4 The information is relevant to damages and to determining whether Guetta's use
5 of the photograph was fair pursuant to 17 U.S.C. § 107(4). Indeed, during the August 23,
6 2010 Scheduling Conference, Hon. Dean D. Pregerson asked whether there was any value
7 to the Photograph. Moreover, the Complaint alleges that Friedman has suffered substantial
8 damage to his business "in the form of diversion of trade, loss of income and profits, and
9 a dilution of the value" of his rights. Complaint, ¶ 23. Guetta is entitled to an understanding
10 of the value of the Photograph. The response fails to comply with the provisions of
11 Fed.R.Civ.P. 34, which require a responding party to indicate whether the inspection
12 activities will be permitted or not.

13 Guetta proposed that Friedman respond by indicating that Guetta's use of the
14 Photograph did not cause Friedman any losses. Friedman's counsel indicated that it would
15 provide a response indicating that Friedman did not suffer any losses from Guetta's use
16 of the Photograph, other than the loss of a potential royalty payment Friedman may have
17 received had he licensed the Photograph to Guetta, but did not provide such a response.
18 Thereafter, Friedman's counsel indicated he would stipulate Friedman "suffered no loss
19 from Defendant's use of the subject photograph other than the loss of a potential royalty
20 payment he would have received had he licensed it to" Guetta, but then reneged and
21 insisted that the stipulation instead state that Friedman "waives any claim for actual
22 damages in the instant action." Id. This change in language makes a significant difference
23 in the analysis of fair use under 17 U.S.C. § 107(4) (effects of the market for and value of
24 the copyrighted work).

25 The response provided by Friedman does not indicate whether he has produced all
26 responsive documents or not and therefore fails to indicate whether the inspection is being
27 permitted. The attached documents do not concern any licensing agreements relating to
28 the Photograph. The objections based on privacy and relevance to the extent the

1 document requests seek documents that did not result in a license is not well taken as
2 Friedman's efforts to market the photograph, whether they resulted in a license or not, are
3 directly relevant to this action that he initiated.

4 **PLAINTIFF'S CONTENTIONS:**

5 Although Plaintiff has stated unequivocally this Request is overbroad and he does
6 not have possession of any further specific information sought by Defendants, Defendant
7 still filed the instant Motion to Compel seeking more information. The basis for Defendant's
8 Motion is that, Plaintiffs' responses "do not seem truthful" and he "must have" more
9 information. First, this is not a basis for a Motion to Compel. Second, this is not the case.

10 Plaintiff has never licensed the image in question for any use similar to Defendant's
11 use. The sole item wherein Plaintiff's image was licensed was a small run of promotional
12 t-shirts printed in 2003 in support of a small art show. Plaintiff does not have any contract
13 with respect to these shirts, to the extent one even existed. This is not uncommon.
14 Plaintiff does not have a record as to what he was promised for these shirts, if anything.
15 This is not uncommon. Plaintiff does not have a record as to what he was paid for these
16 shirts, if anything. This is not uncommon.

17 Plaintiff does have images of the shirt, and produced them. However, Plaintiff does
18 not have royalty information sought and has produced all information in his possession,
19 custody and/or control relating to this shirt. Indeed, the only information that Plaintiff was
20 able to gather regarding these items was found on the internet.

21 To the extent Defendant seeks more information, he can and should subpoena the
22 third parties involved in the production of the shirt. To date Defendant has not done so.
23 However, Defendant cannot compel Plaintiff to make up information as to his royalties,
24 simply because Plaintiff does not know the answer.

25 Moreover, while Defendant's Motion elsewhere mentions Plaintiff's sale of his book,
26 it does not here. To the extent Defendant seeks information relating to Plaintiffs book
27 sales, it is plainly overbroad and invasive of Plaintiff's right to privacy and should be denied
28 for the same reasons as set forth above.

REQUEST FOR PRODUCTION OF DOCUMENTS NO. 35:

DOCUMENTS that evidence, RELATE OR REFER TO any monies YOU received for selling any lithographs or reproductions of the SUBJECT PHOTOGRAPH.

RESPONSE:

Objection. Vague and ambiguous so as to be unintelligible, fails to describe with reasonable particularity each item or category of items to be inspected is overbroad, unduly burdensome, invades Plaintiff's right to privacy and seeks documents not relevant to any claim or defense in this matter, to the extent it seeks documents that did not result in a license. Subject to and without waiving this objection, Plaintiff responds: The SUBJECT PHOTOGRAPH was widely displayed all over the world from 1994-2010 in publicity and promotional materials for the group Run DMC as well as in publicity and promotional materials for Plaintiff's book *Fuck You Heroes; Glen E. Friedman Photographs 1976-1991*, and in exhibitions of Plaintiff's work. Plaintiff further identifies Plaintiff's book, *Fuck You Heroes; Glen E. Friedman Photographs 1976-1991* which is equally available to propounding party.

SUPPLEMENTAL RESPONSE:

Plaintiff incorporates by reference all prior objections and responses and provides the following supplemental response: Plaintiff produces the documents attached as Exhibit A.

GUETTA'S CONTENTIONS AND PROPOSED RESOLUTION:

The information is relevant to damages and to determining whether Guetta's use of the photograph was fair pursuant to 17 U.S.C. § 107(4). Indeed, during the August 23, 2010 Scheduling Conference, Hon. Dean D. Pregerson asked whether there was any value to the Photograph. Moreover, the Complaint alleges that Friedman has suffered substantial damage to his business "in the form of diversion of trade, loss of income and profits, and a dilution of the value" of his rights. Complaint, ¶ 23. Guetta is entitled to an understanding of the value of the Photograph. The response fails to comply with the provisions of Fed.R.Civ.P. 34, which require a responding party to indicate whether the inspection

1 activities will be permitted or not.

2 Guetta proposed that Friedman respond by indicating that Guetta's use of the
3 Photograph did not cause Friedman any losses. Friedman's counsel indicated that it would
4 provide a response indicating that Friedman did not suffer any losses from Guetta's use
5 of the Photograph, other than the loss of a potential royalty payment Friedman may have
6 received had he licensed the Photograph to Guetta, but did not provide such a response.
7 Thereafter, Friedman's counsel indicated he would stipulate Friedman "suffered no loss
8 from Defendant's use of the subject photograph other than the loss of a potential royalty
9 payment he would have received had he licensed it to" Guetta, but then reneged and
10 insisted that the stipulation instead state that Friedman "waives any claim for actual
11 damages in the instant action." Id. This change in language makes a significant difference
12 in the analysis of fair use under 17 U.S.C. § 107(4) (effects of the market for and value of
13 the copyrighted work).

14 The response provided by Friedman does not indicate whether he has produced all
15 responsive documents or not and therefore fails to indicate whether the inspection is being
16 permitted. The attached documents do not demonstrate any monies Friedman received
17 for selling any reproductions of the Photograph. Documents such as receipts have not
18 been produced. The objections based on privacy and relevance to the extent the document
19 requests seek documents that did not result in a license is not well taken as Friedman's
20 efforts to market the photograph, whether they resulted in a license or not, are directly
21 relevant to this action that he initiated.

22 **PLAINTIFF'S CONTENTIONS:**

23 Although Plaintiff has stated unequivocally this Request is overbroad and he does
24 not have possession of any further specific information sought by Defendants, Defendant
25 still filed the instant Motion to Compel seeking more information. The basis for Defendant's
26 Motion is that, Plaintiffs' responses "do not seem truthful" and he "must have" more
27 information. First, this is not a basis for a Motion to Compel. Second, this is not the case.

28 Plaintiff has never licensed the image in question for any use similar to Defendant's

1 use. The sole item wherein Plaintiff's image was licensed was a small run of promotional
2 t-shirts printed in 2003 in support of a small art show. Plaintiff does not have any contract
3 with respect to these shirts, to the extent one even existed. This is not uncommon.
4 Plaintiff does not have a record as to what he was promised for these shirts, if anything.
5 This is not uncommon. Plaintiff does not have a record as to what he was paid for these
6 shirts, if anything. This is not uncommon.

7 Plaintiff does have images of the shirt, and produced them. However, Plaintiff does
8 not have royalty information sought and has produced all information in his possession,
9 custody and/or control relating to this shirt. Indeed, the only information that Plaintiff was
10 able to gather regarding these items was found on the internet.

11 To the extent Defendant seeks more information, he can and should subpoena the
12 third parties involved in the production of the shirt. To date Defendant has not done so.
13 However, Defendant cannot compel Plaintiff to make up information as to his royalties,
14 simply because Plaintiff does not know the answer.

15 Moreover, while Defendant's Motion elsewhere mentions Plaintiff's sale of his book,
16 it does not here. To the extent Defendant seeks information relating to Plaintiff's book
17 sales, it is plainly overbroad and invasive of Plaintiff's right to privacy and should be denied
18 for the same reasons as set forth above.

19
20 **REQUEST FOR PRODUCTION OF DOCUMENTS NO. 36:**

21 All DOCUMENTS that RELATE OR REFER TO each and every instance in which
22 a lithograph and/or reproduction of the SUBJECT PHOTOGRAPH was sold.

23 **RESPONSE:**

24 Objection. Vague and ambiguous so as to be unintelligible, fails to describe with
25 reasonable particularity each item or category of items to be inspected is overbroad, unduly
26 burdensome, invades Plaintiff's right to privacy and seeks documents not relevant to any
27 claim or defense in this matter, to the extent it seeks documents that did not result in a
28 license. Subject to and without waiving this objection, Plaintiff responds: The SUBJECT

1 PHOTOGRAPH was widely displayed all over the world from 1994-2010 in publicity and
2 promotional materials for the group Run DMC as well as in publicity and promotional
3 materials for Plaintiff's book *Fuck You Heroes; Glen E. Friedman Photographs 1976-1991*,
4 and in exhibitions of Plaintiff's work. Plaintiff further identifies Plaintiff's book, *Fuck You*
5 *Heroes; Glen E. Friedman Photographs 1976-1991* which is equally available to
6 propounding party.

7 **SUPPLEMENTAL RESPONSE:**

8 Plaintiff incorporates by reference all prior objections and responses and provides
9 the following supplemental response: Plaintiff produces the documents attached as Exhibit
10 A.

11 **GUETTA'S CONTENTIONS AND PROPOSED RESOLUTION:**

12 The information is relevant to damages and to determining whether Guetta's use
13 of the photograph was fair pursuant to 17 U.S.C. § 107(4). Indeed, during the August 23,
14 2010 Scheduling Conference, Hon. Dean D. Pregerson asked whether there was any value
15 to the Photograph. Moreover, the Complaint alleges that Friedman has suffered substantial
16 damage to his business "in the form of diversion of trade, loss of income and profits, and
17 a dilution of the value" of his rights. Complaint, ¶ 23. Guetta is entitled to an understanding
18 of the value of the Photograph. The response fails to comply with the provisions of
19 Fed.R.Civ.P. 34, which require a responding party to indicate whether the inspection
20 activities will be permitted or not.

21 Guetta proposed that Friedman respond by indicating that Guetta's use of the
22 Photograph did not cause Friedman any losses. Friedman's counsel indicated that it would
23 provide a response indicating that Friedman did not suffer any losses from Guetta's use
24 of the Photograph, other than the loss of a potential royalty payment Friedman may have
25 received had he licensed the Photograph to Guetta, but did not provide such a response.
26 Thereafter, Friedman's counsel indicated he would stipulate Friedman "suffered no loss
27 from Defendant's use of the subject photograph other than the loss of a potential royalty
28 payment he would have received had he licensed it to" Guetta, but then reneged and

1 insisted that the stipulation instead state that Friedman “waives any claim for actual
2 damages in the instant action.” Id. This change in language makes a significant difference
3 in the analysis of fair use under 17 U.S.C. § 107(4) (effects of the market for and value of
4 the copyrighted work).

5 The response provided by Friedman does not indicate whether he has produced all
6 responsive documents or not and therefore fails to indicate whether the inspection is being
7 permitted. The attached documents do not demonstrate any monies Friedman received
8 for selling any reproductions of the Photograph. Documents such as receipts have not
9 been produced. The objections based on privacy and relevance to the extent the document
10 requests seek documents that did not result in a license is not well taken as Friedman’s
11 efforts to market the photograph, whether they resulted in a license or not, are directly
12 relevant to this action that he initiated.

13 **PLAINTIFF’S CONTENTIONS:**

14 Although Plaintiff has stated unequivocally this Request is overbroad and he does
15 not have possession of any further specific information sought by Defendants, Defendant
16 still filed the instant Motion to Compel seeking more information. The basis for Defendant’s
17 Motion is that, Plaintiffs’ responses “do not seem truthful” and he “must have” more
18 information. First, this is not a basis for a Motion to Compel. Second, this is not the case.

19 Plaintiff has never licensed the image in question for any use similar to Defendant’s
20 use. The sole item wherein Plaintiff’s image was licensed was a small run of promotional
21 t-shirts printed in 2003 in support of a small art show. Plaintiff does not have any contract
22 with respect to these shirts, to the extent one even existed. This is not uncommon.
23 Plaintiff does not have a record as to what he was promised for these shirts, if anything.
24 This is not uncommon. Plaintiff does not have a record as to what he was paid for these
25 shirts, if anything. This is not uncommon.

26 Plaintiff does have images of the shirt, and produced them. However, Plaintiff does
27 not have royalty information sought and has produced all information in his possession,
28 custody and/or control relating to this shirt. Indeed, the only information that Plaintiff was

1 able to gather regarding these items was found on the internet.

2 To the extent Defendant seeks more information, he can and should subpoena the
3 third parties involved in the production of the shirt. To date Defendant has not done so.
4 However, Defendant cannot compel Plaintiff to make up information as to his royalties,
5 simply because Plaintiff does not know the answer.

6 Moreover, while Defendant's Motion elsewhere mentions Plaintiff's sale of his book,
7 it does not here. To the extent Defendant seeks information relating to Plaintiff's book
8 sales, it is plainly overbroad and invasive of Plaintiff's right to privacy and should be denied
9 for the same reasons as set forth above.

10
11 **REQUEST FOR PRODUCTION OF DOCUMENTS NO. 37:**

12 All DOCUMENTS that evidence, RELATE OR REFER TO any monies YOU
13 received for the sale of any products that incorporate the SUBJECT PHOTOGRAPH
14 including, but not limited to, any books, apparel and/or other merchandise.

15 **RESPONSE:**

16 Objection. Vague and ambiguous so as to be unintelligible, fails to describe with
17 reasonable particularity each item or category of items to be inspected is overbroad, unduly
18 burdensome, invades Plaintiff's right to privacy and seeks documents not relevant to any
19 claim or defense in this matter, to the extent it seeks documents that did not result in a
20 license. Subject to and without waiving this objection, Plaintiff responds: The SUBJECT
21 PHOTOGRAPH was widely displayed all over the world from 1994-2010 in publicity and
22 promotional materials for the group Run DMC as well as in publicity and promotional
23 materials for Plaintiff's book *Fuck You Heroes; Glen E. Friedman Photographs 1976-1991*,
24 and in exhibitions of Plaintiff's work. Plaintiff further identifies Plaintiff's book, *Fuck You*
25 *Heroes; Glen E. Friedman Photographs 1976-1991* which is equally available to
26 propounding party.

27 **SUPPLEMENTAL RESPONSE:**

28 Plaintiff incorporates by reference all prior objections and responses and provides

1 the following supplemental response: Plaintiff produces the documents attached as Exhibit
2 A.

3 **GUETTA'S CONTENTIONS AND PROPOSED RESOLUTION:**

4 The information is relevant to damages and to determining whether Guetta's use
5 of the photograph was fair pursuant to 17 U.S.C. § 107(4). Indeed, during the August 23,
6 2010 Scheduling Conference, Hon. Dean D. Pregerson asked whether there was any value
7 to the Photograph. Moreover, the Complaint alleges that Friedman has suffered substantial
8 damage to his business "in the form of diversion of trade, loss of income and profits, and
9 a dilution of the value" of his rights. Complaint, ¶ 23. Guetta is entitled to an understanding
10 of the value of the Photograph. The response fails to comply with the provisions of
11 Fed.R.Civ.P. 34, which require a responding party to indicate whether the inspection
12 activities will be permitted or not.

13 Guetta proposed that Friedman respond by indicating that Guetta's use of the
14 Photograph did not cause Friedman any losses. Friedman's counsel indicated that it would
15 provide a response indicating that Friedman did not suffer any losses from Guetta's use
16 of the Photograph, other than the loss of a potential royalty payment Friedman may have
17 received had he licensed the Photograph to Guetta, but did not provide such a response.
18 Thereafter, Friedman's counsel indicated he would stipulate Friedman "suffered no loss
19 from Defendant's use of the subject photograph other than the loss of a potential royalty
20 payment he would have received had he licensed it to" Guetta, but then reneged and
21 insisted that the stipulation instead state that Friedman "waives any claim for actual
22 damages in the instant action." Id. This change in language makes a significant difference
23 in the analysis of fair use under 17 U.S.C. § 107(4) (effects of the market for and value of
24 the copyrighted work).

25 The response provided by Friedman does not indicate whether he has produced all
26 responsive documents or not and therefore fails to indicate whether the inspection is being
27 permitted. The attached documents do not demonstrate any monies Friedman received
28 for selling products that incorporate the Photograph. Documents such as receipts have not

1 been produced. The objections based on privacy and relevance to the extent the document
2 requests seek documents that did not result in a license is not well taken as Friedman's
3 efforts to market the photograph, whether they resulted in a license or not, are directly
4 relevant to this action that he initiated.

5 **PLAINTIFF'S CONTENTIONS:**

6 Although Plaintiff has stated unequivocally this Request is overbroad and he does
7 not have possession of any further specific information sought by Defendants, Defendant
8 still filed the instant Motion to Compel seeking more information. The basis for Defendant's
9 Motion is that, Plaintiffs' responses "do not seem truthful" and he "must have" more
10 information. First, this is not a basis for a Motion to Compel. Second, this is not the case.

11 Plaintiff has never licensed the image in question for any use similar to Defendant's
12 use. The sole item wherein Plaintiff's image was licensed was a small run of promotional
13 t-shirts printed in 2003 in support of a small art show. Plaintiff does not have any contract
14 with respect to these shirts, to the extent one even existed. This is not uncommon.
15 Plaintiff does not have a record as to what he was promised for these shirts, if anything.
16 This is not uncommon. Plaintiff does not have a record as to what he was paid for these
17 shirts, if anything. This is not uncommon.

18 Plaintiff does have images of the shirt, and produced them. However, Plaintiff does
19 not have royalty information sought and has produced all information in his possession,
20 custody and/or control relating to this shirt. Indeed, the only information that Plaintiff was
21 able to gather regarding these items was found on the internet.

22 To the extent Defendant seeks more information, he can and should subpoena the
23 third parties involved in the production of the shirt. To date Defendant has not done so.
24 However, Defendant cannot compel Plaintiff to make up information as to his royalties,
25 simply because Plaintiff does not know the answer.

26 Moreover, while Defendant's Motion elsewhere mentions Plaintiff's sale of his book,
27 it does not here. To the extent Defendant seeks information relating to Plaintiffs book
28 sales, it is plainly overbroad and invasive of Plaintiff's right to privacy and should be denied

1 for the same reasons as set forth above.

2
3 **REQUEST FOR PRODUCTION OF DOCUMENTS NO. 38:**

4 All DOCUMENTS that RELATE OR REFER TO each and every sale of any products
5 that incorporate the SUBJECT PHOTOGRAPH including, but not limited to, any books,
6 apparel and/or other merchandise.

7 **RESPONSE:**

8 Objection. Vague and ambiguous so as to be unintelligible, fails to describe with
9 reasonable particularity each item or category of items to be inspected is overbroad, unduly
10 burdensome, invades Plaintiff's right to privacy and seeks documents not relevant to any
11 claim or defense in this matter, to the extent it seeks documents that did not result in a
12 license. Subject to and without waiving this objection, Plaintiff responds: The SUBJECT
13 PHOTOGRAPH was widely displayed all over the world from 1994-2010 in publicity and
14 promotional materials for the group Run DMC as well as in publicity and promotional
15 materials for Plaintiff's book *Fuck You Heroes; Glen E. Friedman Photographs 1976-1991*,
16 and in exhibitions of Plaintiff's work. Plaintiff further identifies Plaintiff's book, *Fuck You*
17 *Heroes; Glen E. Friedman Photographs 1976-1991* which is equally available to
18 propounding party.

19 **SUPPLEMENTAL RESPONSE:**

20 Plaintiff incorporates by reference all prior objections and responses and provides
21 the following supplemental response: Plaintiff produces the documents attached as Exhibit
22 A.

23 **GUETTA'S CONTENTIONS AND PROPOSED RESOLUTION:**

24 The information is relevant to damages and to determining whether Guetta's use
25 of the photograph was fair pursuant to 17 U.S.C. § 107(4). Indeed, during the August 23,
26 2010 Scheduling Conference, Hon. Dean D. Pregerson asked whether there was any value
27 to the Photograph. Moreover, the Complaint alleges that Friedman has suffered substantial
28 damage to his business "in the form of diversion of trade, loss of income and profits, and

1 a dilution of the value” of his rights. Complaint, ¶ 23. Guetta is entitled to an understanding
2 of the value of the Photograph. The response fails to comply with the provisions of
3 Fed.R.Civ.P. 34, which require a responding party to indicate whether the inspection
4 activities will be permitted or not.

5 Guetta proposed that Friedman respond by indicating that Guetta’s use of the
6 Photograph did not cause Friedman any losses. Friedman’s counsel indicated that it would
7 provide a response indicating that Friedman did not suffer any losses from Guetta’s use
8 of the Photograph, other than the loss of a potential royalty payment Friedman may have
9 received had he licensed the Photograph to Guetta, but did not provide such a response.
10 Thereafter, Friedman’s counsel indicated he would stipulate Friedman “suffered no loss
11 from Defendant’s use of the subject photograph other than the loss of a potential royalty
12 payment he would have received had he licensed it to” Guetta, but then reneged and
13 insisted that the stipulation instead state that Friedman “waives any claim for actual
14 damages in the instant action.” Id. This change in language makes a significant difference
15 in the analysis of fair use under 17 U.S.C. § 107(4) (effects of the market for and value of
16 the copyrighted work).

17 The response provided by Friedman does not indicate whether he has produced all
18 responsive documents or not and therefore fails to indicate whether the inspection is being
19 permitted. The attached documents do not demonstrate any monies Friedman received
20 for selling products that incorporate the Photograph. Documents such as receipts have not
21 been produced. The objections based on privacy and relevance to the extent the document
22 requests seek documents that did not result in a license is not well taken as Friedman’s
23 efforts to market the photograph, whether they resulted in a license or not, are directly
24 relevant to this action that he initiated.

25 **PLAINTIFF’S CONTENTIONS:**

26 Although Plaintiff has stated unequivocally this Request is overbroad and he does
27 not have possession of any further specific information sought by Defendants, Defendant
28 still filed the instant Motion to Compel seeking more information. The basis for Defendant’s

1 Motion is that, Plaintiffs' responses "do not seem truthful" and he "must have" more
2 information. First, this is not a basis for a Motion to Compel. Second, this is not the case.

3 Plaintiff has never licensed the image in question for any use similar to Defendant's
4 use. The sole item wherein Plaintiff's image was licensed was a small run of promotional
5 t-shirts printed in 2003 in support of a small art show. Plaintiff does not have any contract
6 with respect to these shirts, to the extent one even existed. This is not uncommon.
7 Plaintiff does not have a record as to what he was promised for these shirts, if anything.
8 This is not uncommon. Plaintiff does not have a record as to what he was paid for these
9 shirts, if anything. This is not uncommon.

10 Plaintiff does have images of the shirt, and produced them. However, Plaintiff does
11 not have royalty information sought and has produced all information in his possession,
12 custody and/or control relating to this shirt. Indeed, the only information that Plaintiff was
13 able to gather regarding these items was found on the internet.

14 To the extent Defendant seeks more information, he can and should subpoena the
15 third parties involved in the production of the shirt. To date Defendant has not done so.
16 However, Defendant cannot compel Plaintiff to make up information as to his royalties,
17 simply because Plaintiff does not know the answer.

18 Moreover, while this Request seeks information relating to Plaintiff's sale of his
19 book, Defendant does not make any specific argument as to why it should receive this
20 information. Indeed, Defendant conceded in the parties meet and confer that evidence of
21 Plaintiff's sales of his own book (published by Plaintiff's own publishing company,
22 containing only photographs taken by Plaintiff and containing over 100 photographs of
23 various persons and scenes, some famous), does not reveal anything whatsoever about
24 a license fee or royalty rate for use of reproduction of image at issue in this case.

25 While Defendant has pursued a Motion with respect to the instant Request, it does
26 not even attempt to answer the crucial question of: How does information relating to the
27 sales of a 148 page book, with hundreds of pictures of famous persons, tell us anything
28 about the reasonable license fee for one of the pictures contained therein?

1 The obvious answer is, it doesn't. Information regarding Plaintiff's book sales is
2 simply not relevant, and is protected by Plaintiff's right to financial privacy, and Defendant
3 does not seriously attempt to argue otherwise.

4
5 Dated: February 8, 2010

LAW OFFICES OF ALAN S. GUTMAN

6
7 By: /s/ John Juenger
8 John Juenger
9 Attorneys for Defendant and Counter-Claimant
10 THIERRY GUETTA a/k/a MR. BRAINWASH

11
12 Dated: February 8, 2010

THE LINDE LAW FIRM

13 By: /s/ Doug Linde
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16 GLEN E. FRIEDMAN
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